

§ 575.8

12 CFR Ch. V (1–1–04 Edition)

to such stock issuance has been approved by the OTS or that the stock has been approved or disapproved by the OTS or that the OTS has endorsed the accuracy or adequacy of any securities offering documents disseminated in connection with such stock.

(2) The sale of minority stock of the reorganized stock savings association to be made under the minority stock issuance plan, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the OTS.

(3) In the offer, sale, or purchase of stock issued pursuant to this section, no person shall:

(i) Employ any device, scheme, or artifice to defraud;

(ii) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(4) Prior to the completion of a stock issuance pursuant to this section, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the stock to be issued to any other person.

(5) Prior to the completion of a stock issuance pursuant to this section, no person shall make any offer, or any announcement of any offer, to purchase any stock to be issued, or knowingly acquire any stock in the issuance, in excess of the maximum purchase limitations established in the Stock Issuance Plan.

(6) All stock issuances pursuant to this section must:

(i) Comply with 12 CFR part 563g and, to the extent applicable, Form OC; and

(ii) Provide that the offering be structured in a manner similar to a standard conversion under 12 CFR part 563b, including the stock purchase priorities accorded members of the issuing association's mutual holding company, unless the association would

qualify for a supervisory conversion if it were to undertake a conversion under 12 CFR part 563b; or demonstrates to the satisfaction of the OTS that a non-conforming issuance would be more beneficial to the association compared to a conforming offering, considering, in the aggregate, the effect of each on the association's financial and managerial resources and future prospects, the effect of the issuance upon the association, the insurance risk to the relevant Federal deposit insurance fund, and the convenience and needs of the community to be served.

(7) Notwithstanding the restrictions in paragraph (d)(6)(ii) of this section, a savings association subsidiary of a mutual holding company may issue stock as part of a stock benefit plan to any insider, associate of an insider, or tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company without including the purchase priorities of part 563b of this chapter.

(8) As part of a reorganization, a reasonable amount of shares or proceeds may be contributed to a charitable organization that complies with §§ 563b.550 to 563b.575 of this chapter, provided such contribution does not result in any taxes on excess business holdings under section 4943 of the Internal Revenue Code (26 U.S.C. 4943).

(e) *Procedural and substantive requirements.* The procedural and substantive requirements of 12 CFR part 563b shall apply to all mutual holding company stock issuances under this section, unless clearly inapplicable.

[58 FR 44114, Aug. 19, 1993, as amended at 59 FR 22735, May 3, 1994; 67 FR 52035, Aug. 9, 2002; 67 FR 78153, Dec. 23, 2002; 68 FR 75110, Dec. 30, 2003]

§ 575.8 Contents of Stock Issuance Plans.

(a) *Mandatory provisions.* Each of the provisions mandatory for all stock issuance plans under this paragraph shall be deemed regulatory requirements. Each Stock Issuance Plan shall contain a complete description of all significant terms of the proposed stock issuance (including the information specified in § 563b.650 of this chapter to

the extent known), shall attach and incorporate the proposed form of stock certificate, the proposed stock order form, and any agreements or other documents defining the rights of the stockholders, and shall:

(1) Provide that the stock shall be sold at a total price equal to the estimated *pro forma* market value of such stock, based upon an independent valuation, as provided in § 575.7(b) of this part;

(2) Provide that the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the association's mutual holding company parent at the close of the proposed issuance shall be less than fifty percent of the association's total outstanding common stock (This provision may be omitted if the proposed issuance will be conducted by an association that was in the stock form when acquired by its mutual holding company parent, provided the association is not a resulting association or an acquiree association);

(3) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by any non-tax-qualified employee stock benefit plan of the association or any insider of the association and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market, shall not exceed 4.9 percent of the outstanding shares of common stock of the association at the close of the proposed issuance. In calculating the number of shares held by any insider or associate under this provision or the provision in paragraph (a)(4) of this section, shares held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association that are attributable to such person shall not be counted;

(4) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by any non-tax-qualified employee stock benefit plan of the association or any insider of the association and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in

the secondary market, shall not exceed 4.9 percent of the stockholders' equity of the association at the close of the proposed issuance;

(5) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by any one or more tax-qualified employee stock benefit plans of the association, exclusive of any stock acquired by such plans in the secondary market, shall not exceed 4.9 percent of the outstanding shares of common stock of the association at the close of the proposed issuance;

(6) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by any one or more tax-qualified employee stock benefit plans of the association, exclusive of any stock acquired by such plans in the secondary market, shall not exceed 4.9 percent of the stockholders' equity of the association at the close of the proposed issuance;

(7)(i) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by such plans, insiders, and associates in the secondary market, shall not exceed the following percentages of the outstanding common stock of the association, held by persons other than the association's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001–100,000,000	34
\$100,000,001–150,000,000	33
\$150,000,001–200,000,000	32
\$200,000,001–250,000,000	31
\$250,000,001–300,000,000	30
\$300,000,001–350,000,000	29
\$350,000,001–400,000,000	28
\$400,000,001–450,000,000	27
\$450,000,001–500,000,000	26
Over \$500,000,000	25

§ 575.8

12 CFR Ch. V (1–1–04 Edition)

(ii) In calculating the number of shares held by insiders and their associates under this provision or the provision in paragraph (a)(8) of this section, shares held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association that are attributable to such persons shall not be counted.

(8) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed the following percentages of the stockholders' equity of the association, held by persons other than the association's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001–100,000,000	34
\$100,000,001–150,000,000	33
\$150,000,001–200,000,000	32
\$200,000,001–250,000,000	31
\$250,000,001–300,000,000	30
\$300,000,001–350,000,000	29
\$350,000,001–400,000,000	28
\$400,000,001–450,000,000	27
\$450,000,001–500,000,000	26
Over \$500,000,000	25

(9) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all stock benefit plans, other than employee stock ownership plans, shall not exceed more than 25 of the outstanding common stock of the association held by persons other than the association's mutual holding company parent.

(10) Provide that the issuance shall be conducted in compliance with 12 CFR part 563g and, to the extent applicable, Form OC;

(11) Provide that the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with § 575.7 of this part;

(12) Provide that, if at the close of the stock issuance the association has more than thirty-five shareholders of any class of stock, the association shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a–78jj), and undertake not to deregister such stock for a period of three years thereafter;

(13) Provide that, if at the close of the stock issuance the association has more than one hundred shareholders of any class of stock, the association shall use its best efforts to:

(i) Encourage and assist a market maker to establish and maintain a market for that class of stock; and

(ii) List that class of stock on a national or regional securities exchange or on the NASDAQ quotation system;

(14) Provide that, for a period of three years following the proposed issuance, no insider of the association or his or her associates shall purchase, without the prior written approval of the OTS, any stock of the association except from a broker dealer registered with the Securities and Exchange Commission, except that the foregoing restriction shall not apply to:

(i) Negotiated transactions involving more than one percent of the outstanding stock in the class of stock; or

(ii) Purchases of stock made by and held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association even if such stock is attributable to insiders of the association or their associates;

(15) Provide that stock purchased by insiders of the association and their associates in the proposed issuance shall not be sold for a period of at least one year following the date of purchase, except in the case of death of the insider or associate;

(16) Provide that, in connection with stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the association's transfer agent with respect to applicable restrictions on transfer of such stock; and

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as apply to the restricted stock;

(17) Provide that the association will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the association;

(18) Provide that, if necessary, the association's charter will be amended to authorize issuance of the stock and attach and incorporate by reference the text of any such amendment;

(19) Provide that the expenses incurred in connection with the issuance shall be reasonable;

(20) Provide that the Stock Issuance Plan, if proposed as part of a Reorganization Plan, may be amended or terminated in the same manner as the Reorganization Plan. Otherwise, the Stock Issuance Plan shall provide that it may be substantively amended by the board of directors of the issuing association as a result of comments from regulatory authorities or otherwise prior to approval of the Plan by the OTS, and at any time thereafter with the concurrence of the OTS; and that the Stock Issuance Plan may be terminated by the board of directors at any time prior to approval of the Plan by the OTS, and at any time thereafter with the concurrence of the OTS;

(21) Provide that, unless an extension is granted by the OTS, the Stock Issuance Plan shall be terminated if not completed within 90 days of:

(i) The date of such approval; or

(ii) For stock issuances subject to the offering circular requirements of part 563g of this chapter, the date on which the offering circular was declared effective by the OTS; and

(22) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet any of its regulatory capital requirements.

(b) *Optional provisions.* A Stock Issuance Plan may:

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering

may be commenced concurrently with or at any time after the mailing to the members of the reorganizing association and any acquiree association of any proxy statement(s) authorized for use by the OTS. The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

(2) Provide that any insignificant residue of stock of the association not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the OTS's approval;

(3) Provide that the association may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of this section and in § 575.7 of this part to stock shall apply to such units of equity securities unless the context otherwise requires; or

(4) Provide that the association may reserve shares representing up to ten percent of the proposed offering for issuance in connection with an employee stock benefit plan.

[58 FR 44114, Aug. 19, 1993, as amended at 67 FR 52035, Aug. 9, 2002]

§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.

(a) *Charters and bylaws for mutual holding companies*—(1) *Charters.* The charter of a mutual holding company shall be in the form set forth in this paragraph (a)(1) and may include any of the additional provisions permitted pursuant to paragraph (a)(2) of this section.

CHARTER

Section 1: Corporate title. The name of the mutual holding company is _____ (the "Mutual Company").

Section 2: Duration. The duration of the Mutual Company is perpetual.

Section 3: Purpose and powers. The purpose of the Mutual Company is to pursue any or